

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re

PEI TI TUNG,

Debtor.

CHENG-LU HSIEH,

Plaintiff/Appellant,

v.

ROBERT D. STEINBERG,

Defendant/Appellee.

Case No. C04-2194L

ORDER STRIKING APPELLANT'S  
OPENING BRIEF AND RELATED  
DOCUMENTS

Bankruptcy Case No. 02-16797  
Bankruptcy Appeal No. 04-1506

On August 17, 2005, this Court dismissed with prejudice appellant's bankruptcy appeal after appellant had repeatedly failed to meet the Court's deadlines for filing her opening brief. On the same day, the Clerk of the Court received a paper copy of appellant's opening brief (Dkt. # 12) and appellant's "Submission of Opening Brief" (Dkt. # 13) via United States mail. Although appellant requested, and received, an

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APPELLANT'S OPENING BRIEF  
AND RELATED DOCUMENTS

1 extension of the deadline for filing her opening brief, her brief was received by the  
 2 clerk's office seven days after the deadline had passed. Appellant provided no  
 3 explanation for the delay. Because the appeal has been dismissed with prejudice,  
 4 appellant's submissions are stricken.

5 It is worth noting that appellant's submissions are not only untimely, counsel's  
 6 utter disregard for this Court's procedure makes them fatally flawed. For instance, the  
 7 opening brief was submitted by conventional mail even though electronic filing through  
 8 the district court's Case Management/Electronic Case Files ("CM/ECF") docketing and  
 9 filing system has been mandatory for all counsel since May 1, 2004 and mandatory for all  
 10 counsel in bankruptcy court since October 1, 2004.<sup>1</sup> Indeed, as this Court has made clear:

- 11 • It is the responsibility of the filing party to maintain an electronic  
 12 mailbox sufficient to receive the orders and other papers transmitted  
 electronically to counsel.
- 13 • If an attorney is not able to file electronically after June 1, 2004,  
 14 counsel must show good cause in each case to file and serve  
 15 pleadings in a traditional manner. Counsel who succeed in showing  
 cause will be required to include with paper filings a disk or CD-  
 16 ROM containing a portable document format (.pdf) of all papers  
 with the court.

17 CM/ECF Civil and Criminal Procedures, p. 1.

18 Appellant's counsel are registered ECF users, yet they have repeatedly disregarded  
 19 this Court's filing requirements. In addition to the procedural violations noted in this  
 20 Court's previous order (Dkt. # 11), appellant did not include a disc with a .pdf copy of his  
 21 brief along with his paper submission. Moreover, counsel's justification for the paper

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22 <sup>1</sup>Under the Federal Rules of Bankruptcy Procedure, a district court may require  
 23 filing of documents electronically through its local rules. See Bankr. R. 5005(a)(2). The  
 24 electronic filing requirements apply to appellate briefs. See Bankr. R. 8008.

1 filing is woefully inadequate. Counsel states, “we are in the process to arrange to file  
2 documents electronically. Unfortunately up to this time, we are still unable to do so.”  
3 Dkt. # 13, p. 4. This explanation falls far short of establishing the “good cause”  
4 necessary to file pleadings in the traditional manner and provides further evidence that  
5 appellant’s counsel has simply ignored the Court’s electronic filing rules.

6 Such disregard for the Court’s rules is not limited to his failure to meet deadlines  
7 and filing requirements. Appellant’s opening brief, itself, fails to comply with the  
8 Court’s procedural rules. Under Local Bankr. Rule 8006-1, an appellant is required to  
9 “serve and file excerpts of the record as an appendix to its brief.” Although the opening  
10 brief contains references, such as “2 ER, Tab ‘F,’ 319,” Dkt. # 12, p. 1, appellant’s  
11 counsel has submitted no appendix. As a result, there is no evidentiary record, much less  
12 a reference to “2 ER, Tab ‘F,’ 319” to which the Court can refer. Again, appellant makes  
13 no effort to explain this dismaying failure.

14 For all of the foregoing reasons, appellant’s “Opening Brief” (Dkt. # 12) and  
15 “Submission of Opening Brief” (Dkt. # 13) are STRICKEN.

16 DATED this 29<sup>th</sup> day of August, 2005.

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19 Robert S. Lasnik  
20 United States District Judge  
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26 APPELLANT’S OPENING BRIEF  
AND RELATED DOCUMENTS